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AN OUTLOOK ON THE USE OF RECEIVERS IN THE IMPLEMENTATION OF INSTITUTIONAL REFORM: *PEREZ v. BOSTON HOUSING AUTHORITY*

During the past quarter century, courts have expanded traditional equitable principles¹ to implement large-scale institutional reform.² Since the birth of institutional reform litigation,³ federal judges have

1. The principles and powers of equity in England descended from the medieval Chancellor, a high minister of the King who often served the crown as "an adviser, negotiator, ambassador, propagandist and stand-in for the King." D. DOBBS, *HANDBOOK OF THE LAW OF REMEDIES* § 2, at 24-25, 31 (1973) [hereinafter cited as DOBBS]. By the fifteenth century, the Chancellor functioned primarily as a judge. His court, the English Court of Chancery, was a tribunal of dual purpose: to serve higher justice according to the principles of natural law, and to develop flexible approaches to replace rigid common law rules where their enforcement would actually result in injustice. *Id.* See generally Brakel, *Special Masters in Institutional Litigation*, 1979 A.B.F. RES. J. 543, 546-68; Comment, *Equitable Remedies: An Analysis of Judicial Utilization of Neoreceiverships to Implement Large Scale Institutional Change*, 1976 WIS. L. REV. 1161, 1174-75 [hereinafter cited as *Neoreceiverships*].

Equity first crossed the Atlantic in 1789 upon adoption of the Constitution of the United States. Article III, Section 2 extends the judicial power to equity as well as law. The colonists, entertaining a preference for trials and a distaste for conventions of English monarchy, viewed chancery courts as contrary to the spirit of democracy. See Brakel, *supra*, at 547-48.

2. The preponderance of institutional reform litigation has concerned activities of state and local government offensive to rights protected by the federal constitution. See, e.g., *Reynolds v. Simms*, 377 U.S. 533 (1964) (right to legislative apportionment); *Gautreaux v. City of Chicago*, 480 F.2d 210 (7th Cir. 1973), *cert. denied*, 414 U.S. 1144 (1974) (right to nondiscriminatory site selection by local housing authority); *Davis v. Watkins*, 384 F. Supp. 1196 (N.D. Ohio 1974) (rights of patients in state mental hospitals); *Hart v. Community School Bd.*, 383 F. Supp. 699 (E.D.N.Y. 1974) (right to non-segregated schools); *Inmates of Suffolk County Jail v. Eisenstadt*, 360 F. Supp. 676 (D. Mass. 1973), *aff'd*, 494 F.2d 1196 (1st Cir.), *cert. denied*, 419 U.S. 977 (1974) (right to humane prison conditions). See generally Roberts, *The Extent of Federal Judicial Equitable Power: Receivership of South Boston High School*, 12 NEW ENG. L. REV. 55 (1976); Special Project: *The Remedial Process in Institutional Reform Litigation*, 78 COLUM. L. REV. 784 (1978).

3. The landmark cases of *Brown v. Board of Educ.*, 347 U.S. 483 (1954), and *Baker v. Carr*, 369 U.S. 186 (1962), removed doctrinal barriers precluding close judicial scrutiny of and involvement in social and political affairs. In *Brown*, the Supreme

often sought to strengthen affirmative injunction orders by appointing parajudicial officers⁴ to assist them in both formulating remedies and supervising compliance with judicial decrees.⁵ The complexity and urgency of the decree in an institutional case often

Court unanimously announced that racial segregation is unconstitutional in public education. 347 U.S. at 495. In the implementation of *Brown*, *Brown v. Board of Educ.* (Brown II), 349 U.S. 294 (1955), Chief Justice Warren instructed the courts to employ equitable principles in formulating and effectuating desegregation remedies in the public schools. *Id.* at 300. The Supreme Court in *Baker* held that under the Fourteenth Amendment, class action plaintiffs had standing to challenge a state apportionment statute, and that a justiciable cause of action had been stated upon which plaintiffs would be entitled to appropriate relief. 369 U.S. at 237. See Special Project, *supra* note 2, at 788 n.9.

4. The law of equity traditionally recognized three classes of officers: masters, examiners and receivers, each having separate responsibilities. Federal courts in recent years have designated court-appointed officers by a variety of other titles, however, although their functions are often quite similar to those of the original classes. See, e.g., Special Project, *supra* note 2, at 786, citing *United States v. Allegheny-Ludlum Indus., Inc.*, 517 F.2d 826 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976) ("Audit and Review Committee"); *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974) ("Monitor"); *Ellis v. Board of Pub. Instruction*, 423 F.2d 203 (5th Cir. 1970) ("Biracial Committee"); *Miller v. Carlson*, 401 F. Supp. 835 (N.D. Fla. 1975), *aff'd in part, modified in part and remanded*, 563 F.2d 741 (5th Cir. 1977) ("Ombudsman"); *Wyatt v. Stickney*, 344 F. Supp. 373 (N.D. Ala. 1972), *aff'd in part, remanded in part sub nom. Wyatt v. Anderholt*, 503 F.2d 1305 (5th Cir. 1974) ("Human Rights Committee"); *Lebanks v. Spears*, 60 F.R.D. 135 (E.D. La. 1973) ("Master Hearing Officer"); *United States v. United States Steel Corp.*, 5 Empl. Prac. Dec. 7814 (N.D. Ala. 1973) ("Implementation Committee"); *United States v. Wood, Wire and Metal Lathers Local 46*, Empl. Prac. Dec. 876 (S.D.N.Y. 1970) ("Administrator"). See generally *Neoreceiverships*, *supra* note 1, at 1161 n.2.

Federal courts may appoint parajudicial officers pursuant to Federal Rules of Civil Procedure 53, 66 and 70. Rule 53 pertains to masters, providing that: "[The] court in which any action is pending may appoint a special master therein. As used in these rules the word 'master' includes a referee, an auditor, an examiner, a commissioner, and an assessor." FED. R. CIV. P. 53. Although it does not directly authorize federal courts to appoint receivers, Rule 66 nevertheless serves as a codification of federal equity receivership practice. The Rule provides that:

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the district courts. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

FED. R. CIV. P. 66. See Brakel, *supra* note 1, at 549-552. For discussion pertaining to Rule 70, see note 29 *infra*; *Neoreceiverships*, *supra* note 1, at 1189-90.

5. For a thorough discussion of the duties commonly performed by masters, monitors, administrators and receivers, see Special Project, *supra* note 2, at 827-37.

dictate the extent to which the court must transfer discretion from enjoined public officials to court-appointed officers.⁶ In *Perez v. Boston Housing Authority*,⁷ the Massachusetts Supreme Judicial Court concluded that in compelling circumstances a court of general equitable jurisdiction has sufficient power to place a local housing authority in receivership to enforce a state sanitation law.⁸

Plaintiffs in *Perez*, nine residential tenants of the Boston Housing Authority (BHA),⁹ brought a class action suit¹⁰ against the Authority

6. The duties of masters, monitors, mediators and administrators, for example, are distinguishable from those of receivers. Whereas the former may gather information, make recommendations, or supplement the discretion of the enjoined institutional defendant (depending on the court's instructions), the latter *replace* defendants' officers to the extent necessary for compliance. See, e.g., *Morgan v. McDonough*, 540 F.2d 527, 535 (1st Cir. 1976), *cert. denied*, 429 U.S. 1042 (1977) (public high school placed in receivership); *Taylor v. Perini*, 413 F. Supp. 835 (N.D. Ohio 1976) (special master appointed for state prison); *Davis v. Watkins*, 384 F. Supp. 1196 (N.D. Ohio 1974) (master appointed for state mental health institution); *Turner v. Goolsby*, 255 F. Supp. 724 (S.D. Ga. 1966) (county school system placed in receivership).

The court in *Newman v. State of Ala.*, 466 F. Supp. 628 (M.D. Ala. 1979), placed the state prison system in receivership. In so doing, it described the need for comprehensive relief as "more urgent than ever." *Id.* at 630. A more detailed discussion of *Newman* appears in the text accompanying notes 61-68 *infra*. Federal Rule of Civil Procedure 53(b), a codification of the requirement that master appointments reflect the complexity of subject matter before the court, provides that:

In actions to be tried by a jury, a reference [to a master] shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

FED. R. CIV. P. 53(b).

7. 1980 Mass. Adv. Sh. 325, 400 N.E.2d 1231 (1980). Judge Paul G. Garrity of the Massachusetts Superior Court issued the lower court order. *Perez v. Boston Hous. Auth.*, No. 17222 (Mass. Sup. Ct. July 25, 1979).

8. 1980 Mass. Adv. Sh. at 353-54, 400 N.E.2d at 1248.

9. BHA, although technically an "Operating Agency" created pursuant to MASS. ANN. LAWS ch. 121B, § 3 (Michie/Law. Co-op 1969), functions as an independent municipal corporation. Accordingly, BHA's rights and liabilities include the capacity "to sue and be sued," *id.* at § 11(2), and liability "in contract or tort in the same manner as a private corporation." *Id.* at § 13.

Massachusetts is one of the few jurisdictions to have enacted statutes making local housing authorities liable in tort in the same manner as a private corporation. Statutes in most jurisdictions provide only that local housing authorities may sue and be sued. Whereas the majority of these jurisdictions have held such legislation eliminates a housing authority's preexisting governmental immunity, some find a waiver of governmental immunity only where the housing authority acts in a proprietary capacity. See Love, *Landlord's Liability for Defective Premises: Caveat Lessee, Negligence*

and several state officials,¹¹ seeking enforcement of the state sanitary code¹² in BHA buildings.¹³ The Boston Housing Court,¹⁴ finding BHA and the Secretary of Communities and Developments jointly

or Strict Liability?, 1975 WIS. L. REV. 19, 79-80. See notes 35-40 and accompanying text *infra*.

In addition, the Seventh Circuit in *Alexander v. United States Dep't of Hous. and Urban Dev.*, 555 F.2d 166 (7th Cir. 1977), *cert. granted*, 437 U.S. 903 (1978), refused to find an implied warranty of habitability in leases of federally-owned public housing. See 19 B.C.L. Rev. 343 (1978). The *Alexander* decision, however, does not seem to preclude a judicial finding of an implied warranty of habitability in local housing authority leases for federally-funded, as opposed to federally-owned, public housing. See, e.g., *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184, 199, 293 N.E.2d 831, 843 (1973) (local housing authority lease held to contain implied warranty of habitability). The rationale for this conclusion originates in the numerous recent decisions holding that an implied warranty of habitability exists in private residential leases. See, e.g., *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1072-73 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970); *Green v. Superior Court*, 10 Cal. 3d 616, 629, 517 P.2d 1168, 1176, 111 Cal. Rptr. 704, 712 (1974); *Jack Spring, Inc. v. Little*, 50 Ill. 2d 351, 366, 280 N.E.2d 208, 217 (1972); *King v. Moorehead*, 495 S.W.2d 65, 75 (Mo. App. 1973); *Marini v. Ireland*, 56 N.J. 130, 146, 265 A.2d 526, 535 (1970).

10. Plaintiffs in *Perez* initiated the action in the Boston Housing Court, requesting that the court enjoin BHA from allowing defective conditions to persist in the premises where plaintiffs and a class of approximately 40,000 BHA tenants live. *Perez v. Boston Hous. Auth.*, 368 Mass. 333, 334, 331 N.E.2d 801, 802 (1975).

Characteristically, the plaintiff in an institutional reform action sues as a representative of a group. For an extensive analysis of institutional reform plaintiffs, see Special Project, *supra* note 2, at 870-901.

11. Shortly after initiating this action, plaintiffs in *Perez* added as party defendants: the Commissioner of the Department of Community Affairs; the Secretary of Communities and Developments; the Treasurer of the Commonwealth; and the Governor of the Commonwealth. 368 Mass. at 334, 331 N.E.2d at 802. MASS. ANN. LAWS ch. 121B, §§ 26A, 31, 34, 41 and ch. 6A, §§ 4, 8 (Michie/Law. Co-op 1971) place in the defendant state officials supervisory responsibilities over BHA and other Massachusetts housing authorities. Plaintiffs contended, therefore, that chapter 111, § 127N subjected each state official to personal liability for sanitary code violations as an "individual, trust or corporation, partnership or association, or other person who . . . has the authority to decide whether to rehabilitate . . . the premises." MASS. ANN. LAWS ch. 111, § 127N (Michie/Law. Co-op 1974).

12. See MASS. ANN. LAWS ch. 111, § 127A (Michie/Law. Co-op 1973). Pursuant to ch. 111, § 127H:

Any tenant who rents a space in a building for residential purposes wherein a condition exists which is in violation of the . . . state sanitary code . . . may file a petition against the owner of said building to enforce the provisions of the said code in the superior court. . . .

. . . .

The court may:

- (a) issue appropriate restraining orders, preliminary injunctions and injunctions;
- (b) authorize any or all tenants in the respondent's building wherein the violation exists to make rental payments . . . to the clerk of the court . . . ;
- (c) order all the tenants in the respondent's building wherein the violation exists to vacate the premises, and order the board of health to close up said premises; or
- (c) appoint a receiver.

MASS. ANN. LAWS ch. 111, § 127H (Michie/Law. Co-op 1972). (Emphasis added.) Like Massachusetts, several other states have enacted housing codes containing receivership provisions. The following statutes adopt receivership as a remedy for housing code violations: CONN. GEN. STAT. ANN. Ch. 83a, § 47a-57a (West 1981); ILL. ANN. STAT. ch. 24, § 11-31-2 (Smith-Hurd 1981-1982); IND. CODE ANN. § 36-7-9-20 (Burns 1981); MINN. STAT. ANN. §§ 566.25-29 (West 1981); MO. ANN. STAT. § 441-570 to -590 (Vernon 1981); N.J. STAT. ANN. § 2A: 42-79 to -82 (West 1980-1981); N.Y. MULT. DWELL. LAW § 309(5) (McKinney 1980); OHIO REV. CODE ANN. § 5321.07 (Baldwin 1979); R.I. GEN. LAWS §§ 45-24.2-2 to -11 (1980); WIS. STAT. ANN. § 823.22 (1977). Most of these statutes only permit officials responsible for housing code enforcement to bring a receivership action. The Massachusetts, Minnesota and Wisconsin statutes, however, permit tenants to sue for receivership as well. See Comment, *Texas Landlord-Tenant Law and the Deceptive Trade Practices Act—Affirmative Remedies for the Tenant*, 8 *St. Mary's L.J.* 807, 825 (1977).

In the housing context, court-appointed receivers generally collect rents from tenants in substandard housing and apply the payments to repairs. *Id.*

13. In 1975, BHA owned and operated fifty-one developments in the Boston metropolitan area, comprising 15,642 dwelling units. BHA leased an additional 2,714 dwelling units. More than ten percent of the entire Boston population resided in BHA buildings. *Perez v. Boston Hous. Auth.*, 368 Mass. 333, 342, 331 N.E.2d 801, 806-07 (1975).

The history of tenant suits against the BHA, spanning more than a decade, illustrates the complexity of the issues presented in *Perez*. In 1970, an association of tenants residing at one particular BHA development sued BHA and the State Department of Community Affairs (DCA), seeking enforcement of the state sanitary code in that development. *West Broadway Task Force, Inc. v. Commissioner of the Dep't of Community Affairs*, 363 Mass. 745, 297 N.E.2d 505 (1973). In affirming the dismissal of that suit, the Massachusetts Supreme Judicial Court reasoned that in the absence of a complaint plainly invoking chapter 111, § 127H (*see note 12 supra*), or specifically alleging agency misconduct, the plaintiffs lacked standing to pursue a general complaint against BHA and DCA even when based on undisputed sanitary code violations. As filed, the complaint alleged only that BHA and DCA failed to satisfy the Massachusetts statutory policy that local housing authorities maintain "decent, safe and sanitary dwelling accommodations." 363 Mass. at 748, 297 N.E. at 507. The court specifically offered no opinion as to whether it possessed sufficient power under any circumstances to place a public housing development in receivership. *Id.* at 754 n.21, 297 N.E.2d at 511 n.21.

In *Boston Pub. Hous. Tenants' Policy Council v. Lynn*, 388 F. Supp. 493 (D. Mass. 1974), a comprehensive tenants association sought a court order pursuant to the United States Housing Act of 1937, 42 U.S.C. §§ 1401-40 (Supp. III 1979) ("the Act"), directing the United States Department of Housing and Urban Development (HUD)

liable for sanitary code violations,¹⁵ ordered the Secretary to provide additional state funds to BHA for building rehabilitation.¹⁶ Following partial reversal and remand,¹⁷ both the Housing Court and the Massachusetts Superior Court,¹⁸ exercising statutory injunctive

to upgrade living conditions in 15 major BHA developments. Effectively shielding HUD from similar suits by tenants of other federally funded local housing programs, the court in *Lynn* held that the Act imposed upon HUD no judicially enforceable duties to maintain minimum standards of habitability in federally-funded low-income housing. 388 F. Supp. at 496. The Act only requires HUD to provide states financial assistance in alleviating the shortage of habitable low-income housing; the burden of administering the program rests on the local housing authorities. *Id.* Thus, *Lynn* acknowledges that the Act does not preempt state regulation of federally subsidized low-income housing. *Accord*, *Kargman v. Sullivan*, 552 F.2d 2 (1st Cir. 1977) (local authorities held not preempted by the National Housing Act, 12 U.S.C. §§ 1715(d)(2), (3) (Supp. III 1979) from setting rents for federally funded housing below the minimum level set by HUD). In closing its opinion, the *Lynn* court offered the suggestion that the Boston Housing Court and State Legislature were better suited than the federal courts to solve the BHA housing problems. 388 F. Supp. at 498.

The *Lynn* court also refuted an alternative theory presented by the BHA tenants. When HUD subsidizes local housing authority developments, the Act requires HUD and the recipient authority to sign an annual contributions contract. 42 U.S.C. § 1410(a) (Supp. III 1979). *See generally* D. MANDELKER, HOUSING SUBSIDIES IN THE UNITED STATES AND ENGLAND, 47-9 (1973). Pursuant to 42 U.S.C. § 1415(4) (Supp. III 1979), HUD has the authority to include in such contract a condition that the recipient housing authority maintain habitable living conditions in its low-rent dwellings. The *Lynn* court held that as "mere incidental beneficiaries" of the annual contributions contract, BHA tenants lie outside the scope of protection afforded by the Act, and therefore lacked standing to sue HUD officials as third party beneficiaries under the contract. 388 F. Supp. at 496.

14. For a brief discussion of the Boston Housing Court's political history, jurisdiction, powers, and operations see Garrity, *The Boston Housing Court: An Encouraging Response to Complex Issues*, 17 URBAN L. ANN. 15 (1979). For similar discussions of housing courts or their equivalents in other United States cities, see Symposium, 17 URBAN L. ANN. 3, 27-224 (1979).

15. 368 Mass. at 335, 331 N.E.2d at 803. Unlawful conditions in BHA buildings affected a substantial percentage of Boston residents. Probably the great majority of the BHA buildings were in substandard condition in violation of the sanitary code. *Id.* at 341, 331 N.E.2d at 806-07. *See* notes 12 and 13 and accompanying text *supra*.

16. 368 Mass. at 335-36, 331 N.E.2d at 803.

17. 368 Mass. 333, 331 N.E.2d 801 (1975). The Supreme Judicial Court dismissed the Secretary of Communities and Developments, holding that "the legislature did not intend to include the Secretary, or the Commonwealth, or any of its departments or agencies among the entities described in [Mass. Ann. Laws ch. 111,] § 127N as an 'individual, trust or corporation, partnership, association or other person.'" *Id.* at 338, 331 N.E.2d at 804. *See* note 11 and accompanying text *supra*.

18. Judge Garrity was transferred to the Massachusetts Superior Court roughly a year and a half after plaintiffs had initiated this action in the Boston Housing Court.

power,¹⁹ made numerous efforts to compel performance by BHA.²⁰ Having attempted less intrusive remedies to no avail,²¹ the Superior Court ordered that BHA be placed in temporary receivership.²²

As recently as 1888, the rules of equity²³ restricted the issuance of injunctions to the protection of private property, thus preventing their use to vindicate personal or civil rights.²⁴ This restriction,

On consent of the parties, the action was similarly transferred to leave it in the same judicial hands. 1980 Mass. Adv. Sh. 325, 335, 400 N.E.2d 1231, 1239.

19. MASS. ANN. LAWS ch. 111, § 127H(2) (Michie/Law. Co-op 1972). See note 12 and accompanying text *supra*.

20. Initially, the housing court appointed a master to gather information, prepare draft orders responding to "especially intolerable individual situations," and propose interim and long range maintenance and rehabilitation plans. 1980 Mass. Adv. Sh. at 330-31, 400 N.E.2d at 1236-37. Prior to September of 1976, the housing court judge, often with the help of the master, made numerous attempts to alleviate or prevent difficulties relating to substandard conditions in the management of BHA buildings. *Id.* at 331-32, 400 N.E.2d at 1237. During a 15-month period, the housing court issued 25 separate orders, primarily directing BHA to make emergency repairs to its housing developments. *Perez v. Boston Hous. Auth.*, No. 17222 (Mass. Sup. Ct. July 25, 1979).

Shortly after the appointed master submitted his report in July, 1976 indicating that BHA had neither made any progress toward compliance nor was capable of doing so, the plaintiffs moved to place BHA in receivership. Joined by plaintiff intervenor Boston Housing Tenants Policy Council, the parties instead negotiated a series of recommendations for implementing necessary changes in the management of BHA developments. The court then fashioned these and its own recommendations into a decree to which BHA consented. Two years later, following a hearing that included extensive testimony and evidence, the Superior Court found that BHA had failed to comply with the consent decree. 1980 Mass. Adv. Sh., 332-47, 400 N.E.2d at 1237-45.

21. *Id.* at 347, 358-59, 400 N.E.2d at 1245, 1251.

22. *Id.* at 347, 359, 331 N.E.2d at 1245, 1254. The Supreme Judicial Court, in affirming the Superior Court order, modified it by making clear that the proposed receivership would last only as long as necessary. BHA would incrementally regain its functions when appropriate after notice and hearing. *Id.* at 360, 400 N.E.2d at 1251-52.

In addition, the Supreme Judicial Court admonished Judge Garrity both for his emphatic criticism of BHA's poor response to the court's remedial efforts and for his several *ex parte* communications with the parties, particularly BHA. These improprieties, however, did not affect the substance of the proceeding, and thus did not constitute reversible error. *Id.* at 363-64, 400 N.E.2d at 1253-54.

23. See note 1 *supra*.

24. See *In re Sawyer*, 124 U.S. 200 (1888) (equity jurisdiction held inapplicable to criminal action); *Atkinson v. John E. Dougherty & Co.*, 121 Mich. 372, 80 N.W. 285 (1899) (court of equity held powerless to restrain a libelous publication); *Gee v. Pritchard*, 2 Swanst. 402, 36 Eng. Rep. 670 (1818) (power of injunction held applicable to prevent publication of private letter by the recipient). See also G.T. BISPHAM, PRINCIPLES OF EQUITY § 400, at 348-49 (11th ed. McCoy 1931) [hereinafter cited as

largely attributable to the general prohibition of judicial involvement in the political process,²⁵ gradually eroded as federal courts invoked the fiction that certain constitutionally protected rights constitute personal property.²⁶ Once over this conceptual hurdle, the courts were competent to enjoin public institutions for the purpose of protecting purely personal rights.²⁷

The fiction that certain constitutional rights amount to property rights enforceable in equity against public institutions became somewhat strained in situations involving receiverships.²⁸ Courts originally appointed receivers to take custody of disputed real property to prevent the party in possession from causing waste or mismanaging rents and profits.²⁹ As property concepts expanded and corporate en-

BISPHAM]; DOBBS, *supra* note 1, at 118-20; Note, *Receivership as a Remedy in Civil Rights Cases*, 24 RUTGERS L. REV. 115, 118-19 (1969); *Neoreceiverships*, *supra* note 1, at 1173.

25. One limit on the types of questions that federal courts may adjudicate originates in the "political question" doctrine. Under this doctrine a federal court may not address questions that a coordinate branch of the federal government should resolve. *Baker v. Carr*, 369 U.S. 186, 210-11 (1962) (legislative apportionment); *Ludecke v. Watkins*, 335 U.S. 160 (1948) (foreign affairs); *Coleman v. Miller*, 307 U.S. 433 (1939) (process of amending the Constitution or statutes); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 178 (1831) (the status of Indian Tribes). See Scharpf, *Judicial Review and the Political Question: A Functional Analysis*, 75 YALE L.J. 517, 538-39 (1966); Weston, *Political Questions*, 38 HARV. L. REV. 296, 315-16 (1925); *Neoreceiverships*, *supra* note 1, at 1173 n.92.

26. See *Joiner v. Browning*, 30 F. Supp. 512, 517 (W.D. Tenn. 1934). There a federal district court relied on the fiction that the right to vote is a property right in order to enjoin a state governor and several other state officials from interfering with a black plaintiff's franchise.

27. See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) (fourteenth amendment right to desegregated public education); *Brown v. Board of Educ.*, 349 U.S. 294 (1955) (same); *Lankford v. Gelston*, 364 F.2d 197 (4th Cir. 1966) (fourth amendment right to freedom from unreasonable searches); *Alabama v. United States*, 304 F.2d 583 (5th Cir.), *aff'd*, 371 U.S. 37 (1962) (fifteenth amendment right to vote).

28. Federal courts have demonstrated considerable reluctance in placing state agencies in receivership, nominally the most intrusive form of equitable relief available in institutional reform litigation. Instead, federal courts have frequently appointed parajudicial officers bearing official titles other than "receiver" to assume many of the same responsibilities normally undertaken by receivers. One commentator has described these appointments as "neoreceiverships." *Neoreceiverships*, *supra* note 1, at 1173-80.

29. The appointment of a receiver is one of the oldest equitable remedies associated with the court of chancery. The receiver, theoretically an indifferent person between the parties, takes possession of property in dispute as a custodian for the benefit of the party ultimately entitled thereto. A court may appoint a receiver where the

terprise grew, courts of equity discovered new uses for receivers within the commercial context.³⁰ Chancery thus gradually extended the receiver's duties to the management of corporations and certain forms of intangible property, such as licenses and patents.³¹

In the public sector, however, the receivership approach encountered substantial doctrinal obstacles at both federal and state levels.³²

holder of legal title is incompetent or untrustworthy; where equitable rights in property might become endangered by leaving it in the possession of the holder of legal title; or where rights of remaindermen or reversioners might be jeopardized. BISPHAM, *supra* note 24, at 450-53. *See generally* 1 R. CLARK, A TREATISE ON THE LAW AND PRACTICE OF RECEIVERS §§ 4, 11-12, at 4-5, 13-16 (3d ed. Anderson 1959) [hereinafter cited as CLARK]; Brakel, *supra* note 1, at 558-59; Note, *Monitors: A New Equitable Remedy*, 70 YALE L.J. 103, 107-08 (1960).

While a receiver may serve a variety of different specific functions concerning the property in question, all receivers fall within two basic categories: receivers *pendente lite*, and receivers after judgment. A *pendente lite* receiver takes custody of the property only during the course of litigation or other judicial proceeding. CLARK, *supra*, § 13, at 17. *See, e.g.*, Stokes v. Hoffman House, 167 N.Y. 554, 60 N.E. 667 (1901) (receiver *pendente lite* of a hotel held not absolutely liable for rent accrued on leased premises in his possession). Receivers after judgment either preserve the property in question pending appeal, or satisfy the judgment by application or operation of the property. CLARK, *supra*, § 14, at 17. *See, e.g.*, Hurst Production Co. v. Burrage, 104 S.W.2d 34 (Tex. 1937) (receiver appointed to enforce a judgment concerning title to mining property); *See generally* *Neoreceiverships*, *supra* note 1, at 1166-67.

Rule 70 of the Federal Rules of Civil Procedure recognizes a court of equity's authority to appoint a receiver to assist the court in enforcing its judgment. The Rule provides that:

If a judgment directs a party . . . to perform any . . . specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has a like effect as if done by the party.

FED. R. CIV. P. 70.

30. *See generally* Brakel, *supra* note 1, at 559; *Neoreceiverships*, *supra* note 1, at 1167-72.

31. *See, e.g.*, Krieda v. Independence League of America, 188 Wash. 376, 62 P.2d 1101 (1936) (insolvency of corporation); Henderson v. Palmer Union Oil Co., 29 Cal. App. 451, 220 P. 672 (1916) (distribution of corporation no longer in existence); Supreme Sitting of the Order of the Iron Hall v. Baker, 134 Ind. 293 (1893) (mismanagement of corporate affairs). *See generally* CLARK, *supra* note 29, §§ 156-57 at 245; J.F. GLUCK AND A. BACKER, THE LAW OF RECEIVERS OF CORPORATIONS, §§ 10-20, at 31-49 (1891).

32. Doctrinal limitations on a federal court's power to appoint a receiver may be intrinsic or extrinsic. Intrinsic limitations require that remedial power exercised by a court be judicial in nature (i.e., not peculiar to the executive or legislative branches) and within the boundaries of equitable discretion. Extrinsic limitations consist of constraints on judicial remedial power external to the court, such as federalism. Special Project, *supra* note 2, at 858-69.

For instance, institutional defendants are typically state or local agencies charged with depriving individuals of their civil rights.³³ The doctrine of federalism often prevents placing such defendants in receivership, by requiring that federal courts of equity intrude as little as possible into state and local affairs when enforcing federal law.³⁴

Doctrinal obstacles to receivership also exist in actions against state agencies charged with violating state law.³⁵ Sovereign immunity, for example, often precludes courts from entertaining suits brought against state agencies exercising traditional governmental functions.³⁶ Although state agencies cast in purely proprietary roles gen-

33. See note 2 *supra*.

34. Generally, the federalism doctrine limits the federal government, including the judiciary, in the extent to which it may intervene in and interfere with state affairs. See *National League of Cities v. Usery*, 426 U.S. 833 (1976) (FLSA amendments held to obstruct employer-employee relationships in traditional state governmental functions); *Hicks v. Miranda*, 422 U.S. 332 (1975) (federal complaint dismissed where state criminal proceedings had begun against federal plaintiff after federal complaint was filed but before proceedings on the merits in federal court); *Samuels v. Mackel*, 401 U.S. 66 (1971) (state criminal defendant held not entitled to declaratory relief in federal court on basis of invalid state statute once the state criminal proceeding is underway); *Younger v. Harris*, 401 U.S. 37 (1971) (state criminal defendant denied equitable relief in federal court, even if state law in question is unconstitutional, where alleged injury is incidental to all bona fide state criminal prosecutions).

35. The intrinsic limitations on a court's power to appoint a receiver in a state law proceeding are similar in nature to those on courts in cases of federal law. Thus, the separation of powers doctrine, an intragovernmental principle closely related to the political question doctrine, limits the state judiciary from exercising powers or functions belonging to another branch of state government. Similarly, the doctrine of equitable discretion imposes intrinsic constraints on courts in state law proceedings. See notes 41-45 and accompanying text *infra*. An additional limitation on receivership appointments under state law not present in most federal court institutional cases is the doctrine of sovereign immunity discussed in the text accompanying notes 36-37 *infra*.

36. The doctrine of sovereign immunity forbids actions against the state or any action amounting to one against the state in its own courts without its express or clearly implied constitutional or statutory consent. *Principality of Monaco v. Mississippi*, 292 U.S. 313 (1934) (Mississippi held immune from suit by foreign state on bonds issued by Mississippi); *Clark v. State, Dept. of Labor*, 7 Ill. App. 2d 365, 219 N.E.2d 143 (1966) (state held immune from unemployment compensation suit without its consent); *Sullivan v. Commonwealth*, 335 Mass. 619, 142 N.E.2d 347 (1957) (Massachusetts held immune from private nuisance suit unless permitted by state statute or constitution). Accordingly, state agencies exercising traditional government functions generally enjoy sovereign immunity. *Ziel v. Adirondack Mountain Authority*, 230 N.Y.S.2d 832 (1962) (state authority held immune from action alleging state employee's negligence in operating a state vehicle); *Hope Natural Gas Co. v. West Virginia Turnpike Comm'n*, 143 W. Va. 913, 105 S.E.2d 630 (1958) (state held im-

erally lack sovereign immunity,³⁷ the residual separation of powers doctrine³⁸ may insulate even these departments from judicial interference.³⁹ Consequently, some jurisdictions permit receiverships under state law only where explicitly authorized by state statute.⁴⁰

Another stringent limitation on institutional receiverships, the doctrine of equitable discretion,⁴¹ requires that courts strike a balance

mune from suit by gas company alleging negligence in the construction of a state turnpike).

37. See *Board of Trustees of University of Illinois v. Industrial Commission*, 44 Ill. 2d 207, 254 N.E.2d 522 (1969) (Board of trustees not protected by sovereign immunity); *National Surety Corp. v. Barth*, 8 N.J. 121, 84 A.2d 1 (1951) (State Housing Authority held liable for money due under a construction contract); *Applewhite v. Memphis State University*, 495 S.W.2d 190 (Tenn. 1973) (state university held immune in action for libel, but university-owned publishing company not similarly protected).

38. The separation of powers doctrine operates horizontally, i.e., it addresses the relationships between coordinate branches of government *at the same level of government*. The doctrine serves as a safeguard against concentration of the three fundamental powers of democratic government in one department or another, and applies in the context of state government, *Borreson v. Department of Public Welfare*, 368 Ill. 425, 14 N.E.2d 485 (1938) (state welfare act improperly permits judicial review of policy decisions within the discretion of the executive department), as well as federal, *Baker v. Carr*, 269 U.S. 186, 210-11, 217 (1962) (equality of state legislative apportionment for congressional representation held justiciable under the 14th amendment). See generally Forkosch, *The Separation of Powers*, 41 J. COLO. L. REV. 529 (1969); Roberts, *supra* note 2, at 84-6.

39. See, e.g., *Borreson v. Department of Pub. Welfare*, 368 Ill. 425, 14 N.E.2d 485 (1938); *Massey v. Howard*, 240 S.W.2d 743 (Mo. 1951) (receivership held inappropriate to satisfy judgment against local drainage district in absence of authorizing statute); *City of Enterprises v. State*, 156 Ore. 623, 69 P.2d 953 (1937) (state act authorizing the appointment of a receiver to control insolvent municipal corporations held invalid).

40. *Farmington Tp. v. Warrenville State Bank*, 185 F.2d 260 (6th Cir. 1950) (receiver appointed to operate township water system under state revenue bond act); *Massey v. Howard*, 240 S.W.2d 743 (Mo. 1951); *City of Enterprises v. State*, 156 Ore. 623, 69 P.2d 953 (1937).

Like Massachusetts, several other states have enacted housing codes containing receivership provisions for the management and repair of substandard buildings. See, e.g., CONN. GEN. STAT. ANN. Ch. 83a, §§ 47a-57a (1981); ILL. ANN. STAT., ch. 24, § 11-31-2 (Smith-Hurd 1981-82); N.J. STAT. ANN. § 2A: 42-79 to -82 (West 1980-81); N.Y. MULT. DWELL. LAW § 309 (McKinney 1980). Until *Perez*, however, no court had previously imposed receivership upon a local housing authority. See generally Loeb, *The Low Income Tenant in California: A Study in Frustration*, 21 HAST. L.J. 287, 312-15 (1970).

41. See, e.g., *Morgan v. McDonough*, 540 F.2d 527, 535 (1st Cir. 1976); *Inmates of Suffolk County Jail v. Eisenstadt*, 518 F.2d 1241, 1242 (1st Cir. 1975); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 431 F.2d 138, 151 (4th Cir. 1970).

between the intrusiveness and the effectiveness of the remedy when granting equitable relief.⁴² Often couched in terms of familiar maxims,⁴³ the doctrine of equitable discretion merely reflects general equitable principles.⁴⁴ Some courts have held, however, that where a state statute prescribes receivership, the statute, rather than general principles of equity, determines availability of that remedy.⁴⁵

Despite the rigorous constraints on judicial interference with state affairs, a few institutional receiverships have occurred within the realm of federal civil rights cases. In *Turner v. Goolsby*,⁴⁶ a federal district court in Georgia placed a county school system in receivership.⁴⁷ In a conspiracy to prevent racial integration, defendant school board arranged for all the white students in the county to be transferred and bussed into neighboring counties at the state's expense.⁴⁸ After enjoining the school board from further denying plaintiffs their constitutional right to desegregated public education, the district court, exercising general equitable power, appointed a receiver to assist the court in implementing the injunction.⁴⁹ The dis-

42. See Robbins & Buser, *Punitive Conditions of Prison Confinement: An Analysis of Pugh v. Locke and Federal Court Supervision of State Penal Administration Under the Eighth Amendment*, 29 STAN. L. REV. 893, 921 (1977); Special Project, *supra* note 2, at 860-62. See also *Morgan v. McDonough*, 548 F.2d 28, 30 (1st Cir. 1977) (court ordered increasingly intrusive forms of equitable relief after finding "less restrictive alternatives" ineffective).

43. DOBBS, *supra* note 1, § 2.3, at 24-5 n.24; Special Project, *supra* note 2, at 861, citing *Hecht v. Bowles*, 321 U.S. 321, 329 (1944) (equity does not punish); *Deweese v. Reinhard*, 165 U.S. 386, 390 (1897) (he who comes in equity must come with clean hands); *Boyce's Executors v. Grundy*, 28 U.S. (3 Pet.) 210, 215 (1830) (equity will not grant relief if there exists an adequate remedy at law); *Hearne v. Smylie*, 255 F. Supp. 645, 655 (D. Idaho), *rev'd per curiam*, 378 U.S. 563 (1964) (equity will not issue a decree it cannot enforce).

44. Special Project, *supra* note 2, at 861. See, e.g., *Reynolds v. Simms*, 377 U.S. 533, 585 (1964) ("general equitable principles"); *Baker v. Carr*, 369 U.S. 186, 250 (1962) (Douglas, J., concurring); *Morgan v. Kerrigan*, 530 F.2d 401, 419 (1st Cir. 1976), *cert. denied*, 426 U.S. 935 (1976) ("established principles").

45. See *Farmington Tp. v. Warrenville State Bank*, 185 F.2d 260 (6th Cir. 1950) (receiver appointed to operate township water system under state revenue bond act); *Vogel v. Chappel*, 194 Okl. 335, 6 N.E.2d 953 (1937) (appointment of receiver for a contracting company held appropriate under state statute); *Zanes v. Mercantile Bank and Trust of Texas*, 49 S.W.2d 922 (Tex. 1932) (appointment of receiver for partnership equity in stocks held proper under state statute).

46. 255 F. Supp. 724 (S.D. Ga. 1965).

47. *Id.* at 730.

48. *Id.* at 727-28.

49. *Id.* at 730.

strict court in *Turner* undeniably faced compelling circumstances; neither the school board nor the superintendent had taken action either to stop the illegal expenditure of public funds or to accord the rights in question.⁵⁰ The following year, after the school board had planned a desegregated school system for the county under the receiver's supervision, the court terminated the receivership.⁵¹

Turner represents the exception to the rule; courts in institutional cases have typically avoided establishing formal receiverships by appointing officers bearing various other official titles⁵² to perform some of the same duties ordinarily assumed by receivers.⁵³ On only rare occasions since *Turner* have federal courts felt compelled to appoint full-fledged receivers to take control of state agencies. In *Morgan v. Kerrigan*,⁵⁴ a federal district court had enjoined the Boston School Committee from denying black children their Fourteenth Amendment right to attend a unitary school system without experiencing verbal and physical abuse.⁵⁵ Unable to elicit more than minimal compliance from the committee,⁵⁶ the court appointed a receiver to implement the previously ineffective injunctive orders.⁵⁷ In affirming the district court order, the First Circuit enunciated the prevailing principle governing temporary institutional receiverships. Under the *Morgan* standard, a court of equity may place a state institution in receivership to enforce injunctions only when contempt proceedings and further injunctions are unlikely to elicit compliance.⁵⁸ Clearly, the test is one of "reasonableness under the circumstances";⁵⁹ that is, receivership must be a court's "only reasonable

50. *Id.*

51. *Id.* at 734.

52. *See, e.g.,* Pugh v. Locke, 406 F. Supp. 318 (M.D. Ala. 1976) (appointment of a Human Rights Committee in part to upgrade prison medical facilities); Kapral v. Jepson, 271 F. Supp. 74 (D.C. Conn. 1967) (appointment of a special master to formulate a final municipal redistricting plan).

53. *See* Morgan v. McDonough, 540 F.2d 527, 533 (1st Cir. 1976). *See* notes 4 and 29 *supra*.

54. 401 F. Supp. 216 (D. Mass. 1975), *aff'd sub nom.* Morgan v. McDonough, 540 F.2d 527 (1st Cir. 1976), *cert. denied*, 429 U.S. 1042 (1977).

55. 540 F.2d at 530-31.

56. *Id.*

57. *Id.* at 529.

58. *Id.* at 533; Perez v. Boston Housing Authority, 1980 Mass. Adv. Sh. 325, 358, 400 N.E.2d 1231, 1250 n.32 (1980); Newman v. Alabama, 466 F. Supp. 628, 637 (M.D. Ala. 1979).

59. 540 F.2d at 533.

alternative" to noncompliance with its remedial plan.⁶⁰

The standard of "reasonableness under the circumstances" established in *Morgan* has since gained recognition in the context of prison reform litigation. In *Newman v. Alabama*,⁶¹ a federal district court placed the Alabama state prison system in receivership to ensure compliance with injunctions outstanding for six years.⁶² Faced with barbaric prison conditions demanding swift and effective remedial action,⁶³ the *Newman* court, like the court in *Morgan*, viewed the appointment of a receiver as the only reasonable alternative in light of the defendant institution's noncompliance.⁶⁴ Furthermore, the *Newman* court reminded the state Board of Corrections that in an earlier Alabama prison reform case, *Pugh v. Locke*,⁶⁵ the district court had threatened to close several state prison facilities if the Board failed to comply with minimum standards required by the court's decree.⁶⁶ Although the *Pugh* court never found it necessary to execute its threat, the meaning of the *Pugh* dictum is clear: where constitutional rights are at stake, conventional restraints⁶⁷ will not prevent federal courts from exercising extensive injunctive control over certain state activities.⁶⁸

Unlike *Turner*, *Morgan* and *Newman*, the court in *Perez* based its decision entirely on a state statute,⁶⁹ involving neither constitutional

60. *Id.*

61. 466 F. Supp. 628 (M.D. Ala. 1979).

62. In October of 1972, in *Newman v. Alabama*, 349 F. Supp. 278 (M.D. Ala. 1972), the federal district court "held that the failure of the Board of Corrections to afford the basic elements of adequate medical care to inmates in the Alabama Prison System constituted a 'willful and intentional' violation of their rights under the Eighth and Fourteenth Amendments." 466 F. Supp. at 629. As of 1978, though some progress had been made, "the Board of Corrections [had] not in several critical areas achieved substantial compliance with the Court's orders" issued in 1972. *Id.* at 630.

63. *Id.* at 630-35.

64. *Id.* at 635.

65. 406 F. Supp. 318 (M.D. Ala. 1976). See generally Robbins & Buser, *supra* note 42.

66. 466 F. Supp. at 635; 406 F. Supp. at 331.

67. See notes 32-34, 41-44 and accompanying text *supra*.

68. An appropriate example is *Inmates of Suffolk County Jail v. Eisenstadt*, 360 F. Supp. 676 (D. Mass. 1973), *aff'd*, 494 F.2d 1196 (1st Cir.), *cert. denied*, 419 U.S. 977 (1974), where the district court not only ordered that a detailed set of prison operation instructions be carried out, but also ordered a reduction in the number of prisoners being held at the jail in question. *Id.*

69. MASS. ANN. LAWS ch. 111, § 127H (Michie/Law. Co-op 1972).

law nor other tenet of federalism.⁷⁰ The state statute in issue⁷¹ provided the Massachusetts Superior Court sufficient equitable power to place the BHA in receivership;⁷² however, the lack of precedent determining the propriety of enforcing such a statute against a state agency compelled the Massachusetts judiciary to examine equitable principles established in the federal courts. Comparing the trial court decision to federal court orders in recent institutional reform litigation, the *Perez* court concluded that the Superior Court had not abused equitable discretion in its exercise of statutory power.⁷³ To that end, the *Perez* court acknowledged the Superior Court's prudence in exercising restraint by reluctantly approving receivership only when no reasonable alternative to BHA's noncompliance remained.⁷⁴

Distinguishing the case at hand from *Turner, Morgan and Newman*, the Massachusetts Supreme Judicial Court recognized that receivership seemed much less radical in *Perez* than it would in more usual cases of institutional reform.⁷⁵ Not only was there no question of federalism involved,⁷⁶ but the public body enjoined, the BHA, exercised only proprietary functions, much like a business corporation to which receivership often attaches.⁷⁷ The *Perez* court's analogy implies that had the BHA been a state school or prison system, only circumstances as compelling as those in *Turner, Morgan or Newman* would have warranted receivership. Thus, where a defendant state agency's services are more "public" than "proprietary", the separation of powers doctrine⁷⁸ diminishes the desirability of granting intrusive equitable relief under state law.

Institutional reform litigation preceding *Perez* had uniformly ad-

70. 1980 Mass. Adv. Sh. at 359, 400 N.E.2d at 1251.

71. MASS. ANN. LAWS ch. 111, § 127H (Michie/Law. Co-op 1972). See note 12 and accompanying text *supra*.

72. 1980 Mass. Adv. Sh. at 352-54, 400 N.E.2d at 1248.

73. *Id.* at 357-59, 400 N.E.2d at 1250, 1251.

74. *Id.* at 357-58, 364-65, 400 N.E.2d at 1251, 1254.

75. *Id.* at 359, 400 N.E.2d at 1251.

76. *Id.*

77. *Id.* Local housing authorities function primarily to provide low and middle-income housing along with managerial services normally incident to apartment rentals. Once the legislative decision to establish the authority has been made, the authority itself does not participate in any traditional government functions; the authority operates as a non-profit proprietor of rental dwellings.

78. See note 38 and accompanying text *supra*.

dressed preservation of federally protected rights, both constitutional⁷⁹ and statutory.⁸⁰ This pattern most likely will continue, if only because of its effectiveness in initiating at least minor change. The extent to which receivership will play a role in future institutional reform litigation, in both federal and state courts, remains uncertain. Because institutional receiverships require a great deal of post-appointment judicial supervision,⁸¹ few courts to date have ventured along this path of remedial relief.

Although *Perez* may not affect the well formulated federal law which it parallels, this important decision adds a new dimension—suing state agencies in their proprietary capacity—to the field of large scale institutional reform. Potential institutional reform litigants must now take a closer look at proprietary responsibilities assumed by state agencies. The greatest impact of *Perez*, however, lies in the court's approval of a temporary institutional receivership based on state law. *Perez* puts recalcitrant state agencies providing only proprietary services, particularly metropolitan housing authorities,⁸² on notice that they lack inherent immunity from highly intrusive equitable relief granted under state law. Moreover, *Perez* also alerts state

79. See note 27 and accompanying text *supra*.

80. See, e.g., 42 U.S.C. § 1983 (Supp. III 1979) which provides:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, *suit in equity*, or other proper proceeding for redress.

Id. (emphasis added.) 28 U.S.C. §§ 1343a(3), (4) (Supp. III 1979) has since empowered federal district courts:

(3) To redress the deprivation, under color of any state law, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; (4) To recover damages or secure *equitable* or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Id. (emphasis added).

81. See generally Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976).

82. In addition to that of the Boston Metropolitan area, public housing crises have long existed in major urban centers nationally. For a detailed discussion of financial and managerial problems common to urban public housing programs, see J.C. WEICHER, HOUSING—FEDERAL POLICIES AND PROGRAMS 12-82 (1980). See generally I.H. WELFIELD, R.F. MUTH, H.G. WEHNER & J.C. WEICHER, PERSPECTIVES ON HOUSING AND URBAN RENEWAL 15-32 (1975).

legislatures that the implements of institutional reform lie not only within the reach of the courts and Congress,⁸³ but within their reach as well.

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83. See note 80 and accompanying text *supra*.

